

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MINDROC FLOREA,

Plaintiff,

v.

UNITED STATES, U.S. ATTORNEY
GENERAL, U.S. SECRETARY OF
STATE, SOCIAL SECURITY
ADMINISTRATION, INTERNAL
REVENUE SERVICE, STATE OF
NEVADA
ALL PERSONS

Defendants.

Case No. 2:07-CV-01679-KJD (RJJ)

ORDER

Presently before the Court is Defendants', United States, U.S. Attorney General, U.S. Secretary of State, Social Security Administration, and Internal Revenue Service (hereinafter referred to as "federal Defendants"), Motion to Dismiss (#23) and Memorandum in Support (#24) filed March 7, 2008. Plaintiff filed a "Rejection of 'Motion to Dismiss' and 'Memorandum in Support'" (#27) on March 19, 2008. Federal Defendants filed a Reply (#30) on April 2, 2008. Plaintiff also filed a Motion for Entry of Clerk's Default (#38) on June 5, 2008.

1 **I. Background**

2 Plaintiff, Mindroc Florea, has petitioned this Court to compel all federal Defendants to submit
 3 any claims to this Court that each may have against Plaintiff and to accordingly, have this Court
 4 invalidate these claims. (Pl.’s Compl. 2.) Moreover, Plaintiff requests this Court to declare Plaintiff
 5 tax-exempt (Pl.’s Compl. 2.) and subsequently, to refund all Social Security “credits” to Plaintiff
 6 (Main Document Amendment 6). In his pleadings, Plaintiff alleges the purpose of this action is to
 7 complete the renunciation of his U.S. citizenship and to “exit from public, private, commercial,
 8 Federal and/or Democracy jurisdictions of the United States, [and] from all other states or
 9 government corporations.” (Main Document Amendment 5.) Specifically, the premise of his
 10 argument rests on the contention that he is a “natural man.” (Pl.’s Compl. 4.) Plaintiff asserts that
 11 “the natural man does not subject himself to any jurisdictions, laws, law of the flag or any symbol of
 12 the United States, nor to the jurisdiction of this Court or any other Court.”¹ (Main Document
 13 Amendment 3–4.)

14 Federal Defendants argue that Plaintiff’s petition and amendments thereof fail to state a claim
 15 for which relief can be granted and further, that Plaintiff has failed to establish a waiver of sovereign
 16 immunity. (Defs.’ Mot. Dismiss 3.) In the alternative, federal Defendants contend that the matter
 17 before this Court lacks subject matter jurisdiction. (Defs.’ Mot. Dismiss 3.) Federal Defendants
 18 allege the Declaratory Judgment Act, the Anti-Injunction Act, and the Mandamus Act each preclude
 19 Plaintiff’s demands for relief. (Defs.’ Mem. Supp. Mot. Dismiss 3–5.)

20 **II. Failure to State a Claim**

21 In considering a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), “all
 22 allegations of material fact in the complaint are taken as true and construed in the light most favorable
 23 to the plaintiff.” Williams ex. rel. Tabiu v. Gerber Products Co., 523 F.3d 934, 937 (9th Cir. 2008).

24
 25 ¹The Court is aware that Plaintiff asserts in his “Complaint” that he is not subject to the jurisdiction of this
 26 Court, and yet has chosen to file this action with this Court and ask this Court for relief.

1 The issue is not whether Plaintiff will ultimately prevail, but whether he has properly stated a claim.
2 Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

3 After considering the pleadings, Plaintiff fails to meet his burden in this case. He has pled no
4 facts nor legal theory under which this Court can possibly find that Plaintiff may continue to enjoy the
5 privileges of residing in the United States, and yet, not be subject to its laws. Plaintiff's argument that
6 he is a natural man and thus, exempt from the laws of the United States is frivolous. See United
7 States v. Gerads, 999 F.2d 1255 (8th Cir. 1993); United States v. Sloan, 939 F.2d 499 (7th Cir.
8 1991).

9 **III. Subject Matter Jurisdiction**

10 Federal courts are courts of limited jurisdiction. Stock West, Inc. v. Confederated Tribes of
11 the Colville Reservation, 873 F.2d 1221, 1225 (9th Cir. 1989). Unless otherwise shown, a federal
12 court is presumed to lack jurisdiction. Id. Moreover, Fed. R. Civ. P. 8(a)(1) requires a pleading to
13 contain "a short and plain statement of the grounds for the court's jurisdiction, unless the court
14 already has jurisdiction." The burden of establishing jurisdiction rests upon the party seeking the
15 court's jurisdiction. Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375, 377 (1994).

16 Plaintiff has failed to assert in his "Complaint" the grounds for which this Court's subject
17 matter jurisdiction exists. As a result, Plaintiff has not met the basic pleading requirements as
18 required under Fed. R. Civ. P. 8(a)(1). Thus, the Court adopts the presumption that this action lacks
19 subject matter jurisdiction.

20 **A. Sovereign Immunity**

21 Moreover, even if Plaintiff had appropriately asserted the alleged grounds for jurisdiction,
22 sovereign immunity requires Plaintiff to establish his authority to sue the sovereign. The United
23 States is a sovereign and therefore, is immune from suits absent an express waiver of immunity or its
24 consent to be sued. U.S. v. Sherwood, 312 U.S. 584, 586 (1941). Accordingly, it is Congress alone
25 who has the power to confer jurisdiction on the sovereign. Danning v. U.S., 259 F.2d 305, 309 (9th
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1 Cir. 1958). “The terms of [the sovereign’s] consent to be sued in any court define that court’s
2 jurisdiction to entertain the suit.” Id. Without this consent to sue, the action must be dismissed.
3 Hutchinson v. U.S., 677 F.2d 1322, 1327 (9th Cir. 1982). A statutory waiver cannot be implied, and
4 the burden rests with the taxpayer to show an explicit waiver of immunity exists. Lonsdale v. U.S.,
5 919 F.2d 1440, 1444 (10th Cir. 1990); Gilbert v. Dagrossa, 756 F.2d 1455, 1458 (9th Cir. 1985).

6 Here, Plaintiff has instituted an action against the United States, without its consent and
7 without a waiver of immunity. Plaintiff has failed to set forth any statutes entitling him to sue the
8 sovereign nor has he purported any basis for this Court having jurisdiction over this matter. In fact,
9 Plaintiff asks this Court to transverse the authority of Congress and entertain his meritless request to
10 be declared tax-exempt. Therefore, the Court finds that it lacks subject matter jurisdiction over
11 Plaintiff’s claims under the doctrine of sovereign immunity.

12 **B. Declaratory Judgment Act**

13 Federal Defendants further argue that Plaintiff’s action is precluded by the Declaratory
14 Judgment Act. The Declaratory Judgment Act permits the courts of the United States to declare
15 rights and legal relations of individuals “in a case of actual controversy within its jurisdiction, except
16 with respect to Federal taxes.” 28 U.S.C. § 2201(a) (2006). Notwithstanding several exceptions
17 inapplicable to this action, the Act expressly prohibits declaratory relief in actions concerning federal
18 taxes. Sorenson v. Secretary of Treasury of U.S., 752 F.2d 1433, 1437 (9th Cir. 1985). Specifically,
19 the statute grants this procedural authority to federal courts in actions arising under federal
20 jurisdiction. Skelly Oil Co. v. Phillips Petroleum Co., 339 U.S. 667, 671 (1950). The Declaratory
21 Judgment Act does not provide an independent basis for subject matter jurisdiction, but merely
22 expands the remedies available in federal courts. Id.

23 Here, the Court agrees with the government and finds that this Court cannot entertain
24 Plaintiff’s action under the Declaratory Judgment Act. Although Plaintiff implores this Court to
25 declare him tax-exempt and to invalidate all claims against him by federal Defendants, Plaintiff’s
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request for relief contradicts the plain language of the statute which prohibits declaratory relief “with respect to federal taxes.” Additionally, because the Act does not provide this Court with an independent basis for subject matter jurisdiction, this court does not possess authority to issue declaratory relief in a matter concerning federal taxes sitting outside of its jurisdiction.

C. Anti-Injunction Act

Federal Defendants further contend that to the extent that this action is to be construed as a attempt to prevent the government from collecting taxes, the Anti-Injunction Act bars Plaintiff’s claim. The Anti-Injunction Act provides that “no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person” subject to exceptions not applicable to this action. 26 U.S.C. § 7421(a) (2006). The Anti-Injunction Act may be avoided if the (1) tax payer would suffer irreparable injury, and (2) the taxpayer is certain to succeed on the merits. Bob Jones University v. Simon, 416 U.S. 725, 737 (1974). If an action does not fall within any of the exceptions listed in the statute, the Court must dismiss the action for lack of subject matter jurisdiction. Elias v. Connett, 908 F.2d 521, 523 (9th Cir. 1990).

Again, the Court agrees with the government and finds that this Court lacks subject matter jurisdiction under the Anti-Injunction Act. Plaintiff’s request of this Court to declare Plaintiff tax-exempt and to invalidate all government claims against him is an unequivocal request to restrain the government’s assessment and collection of Plaintiff’s taxes. This stands in immediate contravention of the Anti-Injunction Act. Plaintiff will not suffer irreparable injury by submitting to the United States tax system, nor will Plaintiff succeed on the merits of his desire to opt-out of the system. The payment of taxes is not voluntary. Wilcox v. Commissioner, 848 F.2d 1007, 1008 (9th Cir. 1988). “All individuals, natural or unnatural, must pay federal income tax on their wages,” regardless of whether they exercised any privilege from the federal government. Lovell v. U.S., 755 F.2d 517, 519 (7th Cir. 1984); U.S. v. Sloan, 939 F.2d 499, 501 (7th Cir. 1991).

1 **D. Mandamus Relief**

2 Federal Defendants also contend that to the extent that Plaintiff's action can be construed as a
3 request for mandamus relief, jurisdiction is lacking. The Mandamus Act confers jurisdiction to federal
4 district courts to compel a government official to perform a duty owed to a plaintiff. 28 U.S.C. §
5 1361 (2006). Mandamus relief is appropriate when (1) the individual claim is clear and certain; (2)
6 the official's duty is nondiscretionary, ministerial, and so plainly prescribed as to be free from doubt;
7 and (3) no other adequate remedy is available." Kildare v. Saenz, 325 F.3d 1078, 1084 (9th Cir.
8 2003).

9 This Court lacks jurisdiction to grant mandamus relief because Plaintiff has failed to allege that
10 a nondiscretionary duty is owed to him, nor does the Court find any nondiscretionary duties are owed
11 to Plaintiff.

12 **IV. Conclusion**

13 The Court finds that Plaintiff has failed to state a claim against any federal Defendant for
14 which relief can be granted. Additionally, the Court finds that Plaintiff has failed to establish a basis
15 for this Court having subject matter jurisdiction over his claims.

16 Accordingly, **IT IS HEREBY ORDERED** that federal Defendants' Motion to Dismiss (#23)
17 is **GRANTED**, and Plaintiff's Motion for Entry of Clerk's Default (#38) is **DENIED** as moot.

18 DATED this 26th day of June 2008.

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22 _____
Kent J. Dawson
United States District Judge